

Cabinet

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Interim Policy / Procedure for the Adoption of Public Open Space Associated with New Housing Developments



Report of Corporate Management Team

Joint Report of Terry Collins, Corporate Director of Neighbourhood Services and Ian Thompson, Corporate Director of Regeneration and Economic Development

Councillor Brian Stephens, Cabinet Portfolio for Neighbourhoods and Local Partnerships

Councillor Neil Foster, Cabinet Portfolio for Economic Regeneration

Purpose of the Report

1. To consider introduction of an interim countywide adoption policy for maintenance of public open space linked to new housing developments.

Background

2. Since Local Government Reorganisation (LGR) in April 2009 there has been no countywide open space adoption policy.
3. Prior to LGR the seven former district councils who undertook the majority of grounds maintenance work on open spaces, had varying approaches to adoption. Once such land was deemed to be of an adoptable standard some former districts assumed responsibility for its maintenance at no cost to the housing developer, other former districts levied a charge. There are also examples of open space maintenance being carried out by former districts at no charge yet the land remaining in private ownership.
4. Discussions between officers in Neighbourhood Services and Regeneration and Economic Development have identified the need to view open space adoption along with the other adoption processes associated with new housing developments to ensure a full and proper co-ordination with regeneration strategy, planning and assets issues. This is a significant piece of work and will result in a new cross-cutting policy / procedure for the adoption of new housing developments in due course.
5. Furthermore, under the terms of the Flood and Water Management Act 2011 it is expected that the adoption of Sustainable Urban Drainage Schemes (SUDS) on housing developments will be obligatory from 2014 provided that they have been constructed to specifications / plans agreed with Durham County Council Drainage Section. The earliest this will be from is 1 April 2014. Final guidance

on this has yet to be announced by the Department for Environment Food and Rural Affairs (DEFRA).

6. Until the new cross-cutting policy is developed, and to deal with the legacy issues inherited at and since LGR, a sustainable and cost effective countywide approach to the adoption of open spaces is required in the interim period, the necessity for which is amplified by the number of developers now seeking adoption procedure clarification as their developments are completed / near completion. A schedule of these developments is shown at Appendix 3

Options

There are three options open to Durham County Council in respect of open space adoptions:

7. **To no longer adopt open space**, leaving maintenance responsibility to developers. They may choose to establish management companies for this purpose, into which residents, or other types of development occupiers, might pay an annual fee. (NB – the adoption of SUDS associated with open space is expected to be obligatory from either April or October 2014. Final guidance on this has yet to be announced by DEFRA)
8. **To adopt open space at Durham County Council expense**, provided that the land in question is to an adoptable standard and conveyed to Durham County Council with unencumbered title to become a Durham County Council asset.
9. **To adopt open space in exchange for a commuted sum**, calculated by means of an agreed formula, provided that the land in question is to an adoptable standard and conveyed to Durham County Council with unencumbered title to become a Durham County Council asset.
10. These options may not be mutually exclusive, for example there may be an element of choice by developers to either maintain an open space themselves, or transfer to the Durham County Council (under conditions if they apply).

Option Assessment

11. Non adoption at first appears to be an attractive option as it does not expose Durham County Council to any obligation in respect of ongoing grounds maintenance costs. However, on further scrutiny, it is not felt to be a preferred long term solution for all development. Whilst some open space will remain well maintained by virtue of either good private management or the care and neighbourhood pride of residents or users, some spaces might deteriorate. This may be the result of developers defaulting on their responsibilities, management companies collapsing through lack of funds, or a transient user base being indifferent to their surroundings. This may well result in pressure brought on Durham County Council, from both the public and elected Members, to carry out open space remedial and maintenance work at Durham County Council expense that will not be recoverable. There is also a general expectation among developers that the Authority will assume on-going maintenance responsibilities.

12. To adopt open spaces at Durham County Council expense without any provision for ongoing maintenance costs from the developer is not seen to be a financially sustainable option in the current economic climate. However it could be argued that the Authority will benefit from an increase in council tax revenue as a result of the new housing development, which may support growth in service budgets. Also Durham County Council want to encourage re-generation through housing development and charging a commuted sum may discourage this. If this approach were to be adopted, then the budget to meet these extra commitments would either need to come from savings elsewhere in the service, or met through corporate financial support.
13. Public open space is just one of a number of issues that have an impact through commuted sums on the viability of development schemes. We will be providing guidance to developers on the requirements to be placed on them and the finalised adoptions report would be an ideal template for an supplementary planning document (SPD) to help deliver the open space policy in the Local Plan framework through the Community Infrastructure Levy (CIL). Further work will be carried out on typical m2 costs and will focus on areas such as grass cutting, soft / hard landscaping, and that the other adoptable elements may need to be treated as 'abnormals' in viability appraisals. This would be subject to further development beyond this interim report.
14. To adopt the open spaces in exchange for an agreed fee (commuted sum). would potentially bring an appropriate level of certainty to developers, reassurance and a high level of service to the public who benefit from and enjoy such space, and a sustainable financial position for Durham County Council. A procedure for commuted sums on all new housing development sites will greatly assist in enhancing the grounds maintenance budget. It is common among other north east local authorities to levy a commuted sum for open space adoption and the charges are shown below:

| Authority | Commuted Sum calculation based on |
|------------------|---|
| Gateshead | 10 or 20 Years maintenance depending on area / scheme |
| Middlesbrough | 15 Years maintenance |
| Northumberland | 15 or 20 Years maintenance depending on area / scheme |
| Stockton | 15 Years maintenance |
| Sunderland | 20 Years maintenance |

15. The charges levied by the former districts with regards to commuted sums in relation to open space adoption are shown below:

| Former District | Commuted Sum Required | Calculation based on |
|------------------------|------------------------------|-----------------------------|
| Chester le Street | YES | 10 Years maintenance |
| Derwentside | YES | 5 Years maintenance |
| Durham City | NO | - |
| Easington | NO | - |
| Sedgefield | YES | 15 Years maintenance |
| Teesdale | YES | 15 Years maintenance |
| Wear Valley | YES | 20 Years maintenance |

In view of the financial climate Durham County Council will have to operate in going forward; it is felt it would not be unreasonable to request a commuted sum based on a **15 year** maintenance period bearing in mind that the authority will be responsible for maintaining the open space areas concerned in perpetuity.

Potential Adoption Mechanism

16. The adoptable elements within an Open Space Adoption Policy can be divided into eight:
- a) Grass
 - b) Soft Landscaping
 - c) Hard Landscaping
 - d) Trees and Hedges
 - e) Footpaths that do not form part of the adopted highway
 - f) Art Installations
 - g) Sustainable Urban Drainage Schemes
 - h) Children's Play Areas / Equipment

Under the terms of the Flood and Water Management Act 2011 it is expected that the adoption of Sustainable Urban Drainage Schemes (SUDS) on housing developments will be obligatory from either April or October 2014 provided that they have been constructed to specifications / plans agreed with Durham County Council Drainage Section. Final guidance on this has yet to be announced by DEFRA. (NB - an open space adoption in general is not obligatory and it is currently at the discretion of the developer as to whether or not it is offered for adoption). It does make sense to include them within the open space adoption rather than dealing with it as a separate obligation.

17. Open space adoption should form an integral part of the pre-planning application submission discussions. The developer's preference in respect of whether adoption is favoured should be established, and the Durham County Council adoption mechanism clarified. Once an acceptable scheme has been provisionally agreed with Durham County Council Planning Officers, a Streetscene Technical Officer would review the areas for which adoption is to be sought, should planning permission be subsequently granted by Durham County Council Planning Committee Members, for acceptability for adoption. Adoption cannot be insisted upon. However in view of its aforementioned value to both Durham County Council and the public, it should be encouraged. The developer will be required to deposit a bond covering the cost of the approved landscaping / artwork (figure to be supplied by the developer and verified by Durham County Council), to be drawn upon by Durham County Council and used to complete the works in question should the developer default / cease trading.
18. Open space elements within a development proposal that are considered important by Planning Officers to the success and acceptability of the scheme shall be secured by planning condition. Such conditions are enforceable under the provisions of planning law.
19. Once a development has received planning approval the developer can be given an **indication** of the sum of money to be paid to Durham County Council in return for adoption upon completion of the development (NB – these figures will be subject to change depending on how long the development takes to complete as outlined). This sum would cover three aspects of the adoption:
 - a) The cost of the maintenance to be incurred in respect of the aforementioned eight adoptable elements.
 - b) The legal charge for conveying the land in question to Durham County Council .
 - c) An administration fee levied by Assets in respect of preparing terms for adoption etc.

If a developer identifies through the planning stage that they do not wish Durham County Council to adopt then Planning will use other powers to secure the future maintenance of the open space that has been negotiated as part of the application process. This will be through a planning condition / Section 106 Agreement to require the developer to submit details of an open space management plan.

20. It is anticipated that a 'per square metreage' calculation will be possible in respect of grass cutting, soft landscaping and hard landscaping. However, an evaluation of trees, hedges, art installations, children's play equipment and SUDS would be site specific in view of significant variations in tree types, condition and ages where mature trees and hedges already exist on site, and bearing in mind differences in play equipment / art installations / SUDS maintenance demands. Such costings will be developed by the Streetscene Technical Officers in liaison with relevant parties, to be reviewed at the start of each financial year. A total maintenance price for a year would be calculated,

then this would be multiplied by an agreed factor (15 years is suggested) to give a final maintenance figure.

To this final sum would be added a one off legal and asset fees, themselves to be reviewed each financial year. Thus an adoption fee would be established as a single one off payment, in return for which the land would be conveyed to Durham County Council and become its asset.

21. The adoption fee would be invested and ring fenced for use in connection with the maintenance of open space on the site in question only, including the accrued interest.
22. Upon completion of a new development, and receipt of notification from the developer that they wish Durham County Council to commence adoption of the open space areas associated with it, then the process for progressing the adoption request will be followed as shown at Appendix 2
23. The construction of a number of new housing developments currently being offered for adoption was commenced prior to Local Government Re-organisation (LGR) in April 2009. It may be the case that formal terms of adoption were entered into between the developer and the former district based on that particular authority's policy with regards to open space adoption at that time. In such circumstances Durham County Council will have to assume responsibility based on the terms agreed at that time. However where no formal terms of adoption were entered into it is proposed that the new interim countywide policy will apply. This will be the case even if there was a presumption on the part of the developer that an adoption would be carried out based on the policy operated by a particular former district.
24. Unfortunately sometimes a housing developer will go into receivership and cease trading prior to the completion of the development. In such circumstances, while the deposit of a bond covering the cost of landscaping (as detailed in point 15) can be drawn upon and used to complete the works, Durham County Council will not be able to obtain a commuted sum to provide for ongoing grounds maintenance. If open spaces are unmaintained it invariably will be Durham County Council / County Council Members who will receive the complaints from local residents.

Next Steps

25. The adoption of this interim policy will allow progression to formal adoption of the schemes identified in Appendix 3. Informally, many of the developers involved are expecting a commuted sum formula to be applied.
26. This interim policy, would also form part of the supplementary planning document, alongside other adoption issues, to act as guidance/requirements for developers linked to the Local Plan Framework

Recommendations

27. That Members consider the principle of an interim open space adoption policy incorporating a commuted sum equivalent to 15 years maintenance costs ring fenced for this purpose.
28. Subject to approval, to note that the new interim countywide policy be applied to all future requests for adoption. In instances where a developer had previously agreed to formal terms of adoption (for example with a former district), then these terms will still apply.
29. Members may wish to consider if a policy/procedure is required for housing developers ceasing trading prior to completion, where no funds for maintenance would be forthcoming. This can either be looked at on a case by case basis, or an early policy decision to accept (or reject) maintenance made.

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Appendix 1: Implications

Finance To adopt open spaces at Durham County Council expense without any provision for ongoing maintenance costs from the Developer is not seen to be a financially sustainable option in the current economic climate. A procedure for commuted sums on all new housing development sites will greatly assist in enhancing the grounds maintenance budget.

Staffing Any additional staff costs associated with increased maintenance responsibilities in future would be funded through the commuted sum adoption fee which would be invested and ring fenced in connection with the particular development for which it was paid.

Risk There is a risk that prior to completion a developer may go bankrupt, leaving the future adoption of the open space in question. This could either be approached on a case by case basis, or if preferred procedure/criteria established for any public assistance,

Equality and Diversity / Public Sector Equality Duty the maintenance and development of Open Spaces must take into consideration and demonstrate continuously the meeting of ongoing needs and uses of all sectors of society irrespective of age, gender, religion race or disability. This will include potential advances in design and technology promoting inclusive sports and recreation in these areas.

Accommodation None

Crime and Disorder None

Human Rights None

Consultation A working group with representation from Planning, Streetscene, Asset Management, Legal, and Landscape Design has discussed all issues relating to open space adoption. The outcomes of this group's discussions have formed the basis of this report. Discussions have also taken place with the council's Drainage Team regarding SUDS, the implications of this and the proposal to include as an element of the open space adoption process. Finance has been made aware of the proposal to look at securing a commuted sum from developers in order to support ongoing maintenance costs. Informal discussions have taken place with developers in Appendix 3, with the feedback that they are keen for the council to put in place adoption procedures of this kind.

Procurement None

Disability Issues None

Legal Implications Formal agreements would be required with developers as part of the adoption process

Appendix 2 - Proposed Process for the adoption of Public Open Space

- 1) Developer approaches Neighbourhood Services (Streetscene) to commence adoption of new open spaces and provides site layout plans showing the areas to be considered.
- 2) Neighbourhood Services (Streetscene) contacts Asset Team and provides details of the open spaces to be adopted. Assets to commence consultation process with local Members etc and drafting of Durham County Council terms for adoption.
- 3) Streetscene Technical Officer carry out an initial site inspection to ensure areas proposed for adoption are of a suitable standard for on-going grounds maintenance and a defects / 'snagging' list produced if necessary for corrective action prior to any adoption taking place.
- 4) Streetscene Technical Officer consult with other sections of the council regarding adoption of features on an open space which would come under their remit (i.e. Culture and Sport concerning children's play equipment, Drainage Team regarding SUDS and Regeneration and Economic Development regarding public rights of way)
- 5) Streetscene Technical Officer determines if the adoption can be progressed straight away or if a further 12 month maintenance period by the developer will be required (commencing from the date of the initial inspection).
- 6) Streetscene Technical Officer calculates the commuted sum figure for on-going grounds maintenance based on the approved formula.
- 7) Streetscene Technical Officer contacts Assets Team and provides details of the commuted sum required for on-going grounds maintenance.
- 8) Assets Team finalise Durham County Council terms for adoption and contact / liaise with Developer regarding these.
- 9) Upon agreement of suitable terms the Assets Team progress delegated authority for adoption of the open spaces and contact Legal Services to progress conveyance of the land to Durham County Council
- 10) Neighbourhood Services (Streetscene) await confirmation from the Assets Team / Legal Team that conveyance of the land has been completed prior to commencing grounds maintenance of the newly adopted open spaces.

Appendix 3 – Schedule of Developments which Durham County Council approached to formally adopt open spaces (as at 31 January 2013)

| DEVELOPMENT | DEVELOPER |
|---|--------------------------------------|
| Abbeydale Gardens, South Hetton | Taylor Wimpey |
| Almond Way, Seaham | Persimmon |
| Aykley Heads, Durham City | Taylor Wimpey |
| Balmoral Grove, Consett | Persimmon |
| Beamish Hills, Stanley | Bennison Group |
| Beamish Rise, Stanley | Turney Wylde |
| Birkdale View, Consett | Taylor Wimpey |
| Braemar Court, Blackhill | Persimmon |
| Broadoaks, Murton | Taylor Wimpey |
| Carr Lane, Spennymoor | Taylor Wimpey |
| Carr Street, Whitworth, Spennymoor | Cecil Yuill and Bellway |
| Castle Hills, Castleside | Persimmon |
| Churchill Close, Shotley Bridge | Police Authority |
| Cobblers Hall, Newton Aycliffe | Miller Homes |
| Cottingham Grove, Thornley | Persimmon |
| Greenacres Road, Consett | Freehold Managers |
| Highsteads, Medomsley | Persimmon |
| Hillside Court, Spennymoor | Taylor Wimpey |
| Ivy Close, Spennymoor | Three Rivers Housing |
| Lily Gardens, Dipton | Dunelm Homes |
| Manor Grange, Wingate | Taylor Wimpey |
| Manor Park, West Auckland | Taylor Wimpey |
| Maplewood Court, Langley Park | Persimmon |
| Meadow Rise, Consett | Lovell |
| Mill Close Walk, Sedgefield | Taylor Wimpey |
| Murray Park, Stanley | Dunelm Homes |
| Pine Ridge Avenue, Sedgefield | Taylor Wimpey |
| Ranulf Court, Newton Aycliffe | TBC |
| Rowan Drive, Brasside, Durham City | HMPS |
| Rudds Hill, Ferryhill Station | Taylor Wimpey |
| St. Mark's Road, Fishburn | Mcinerney (gone into administration) |
| The Gables, Salter's Lane, Sedgefield | Taylor Wimpey |
| The Hawthorns, West Kyo | Persimmon |
| The Links, Blackhill | Taylor Wimpey |
| The Meadows, Framwellgate Moor | Miller Homes |
| The Orchard / Beacon Avenue, Sedgefield | Shenstone Properties |
| Whitehouse Road, Spennymoor | Persimmon |